

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1641 w/CS Funeral & Cemetery Services, Funeral Directing, Embalming, & Direct Disposition  
**SPONSOR(S):** Representative(s) Dean  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2016

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, &amp; Reg. Business (Sub)</u>	<u>6 Y, 0 N</u>	<u>Livingston/Gallen</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>19 Y, 8 N</u>	<u>Livingston/Gallen</u>	<u>Liepshutz</u>
3) <u>Commerce</u>	<u>15 Y, 0 N w/CS</u>	<u>Cutchins</u>	<u>Whitfield</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill addresses several areas relating to consumer concerns in the regulation of certain funeral and cemetery activities. Specifically, the bill:

- Revises and creates definitions in ch. 470, F.S., relating to the regulation of funeral directors, embalmers, direct disposers, and their establishments;
- Establishes additional requirements for direct disposal establishments and operators of incinerators;
- Expands the responsibilities of funeral directors and amends requirements for funeral establishments;
- Revises the requirements of the embalmer apprentice program and creates rules and control measures for preneed agents.
- Expands the definitions in Chapter 497, Florida Statutes, to encompass terms used in the direct disposal or cremation of human remains;
- Sets statutory standards for grave spaces and sizes;
- Requires the creation of certified land surveys to map the location and identification of certain grave spaces;
- Provides for the identification of human remains on the inside and outside of burial containers and reduces the liability of licensed cemeteries in circumstances of mistaken identity;
- Prohibits persons who do not hold valid certificates of authority to sell preneed contracts for funeral and funeral services and merchandise from advertising to sell or making arrangements to sell such contracts;
- Clarifies contract cancellation and refund provisions; and
- Revises the duties of the Board of Funeral and Cemetery Services of the Department of Financial Services by requiring the board to review issues relating to inactive or revoked certificates of authority and by authorizing the board to perform the necessary procedures to protect consumers in the case of inactive or revoked certificates of authority.

The act will take effect on October 1, 2003.

Chapter 497, F.S. regulates cemeteries and the sale of preneed cemetery and funeral merchandise and service contracts in Florida and Chapter 470, F.S., regulates funeral directors, embalmers and direct disposers. During the past two years, troublesome developments in the funeral and cemetery industry have been brought into the public's eye by numerous media reports. Staff from the Council on Competitive Commerce, the Banking Committee, and the Business Regulation Committee were directed to monitor the 13

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meetings held by a group of industry representatives (Legislative Partnership Committee of 2003 or LPC03) which formed to work towards consensus on the issues. Not all members of the industry chose to participate in the work of this group.

After the LPC03 compiled its legislative recommendations into report form, committee staff conducted a meeting to discuss the potential consensus and controversy surrounding these issues. The meeting was attended by representatives from the LPC03, the regulatory agencies, and individuals representing the Board of Funeral Directors & Embalmers and the Independent Funeral Directors Association. Staff presented each issue and took testimony on whether there was consensus on the issue or whether it was still subject to controversy between the groups represented. The provisions of this bill reflect those issues covered by ch. 497, F.S., which were not objected to by any person in attendance at the [staff conducted] meeting.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill addresses several areas relating to consumer concerns in the regulation of certain funeral and cemetery activities. Chapter 497, F.S., regulates cemeteries and the sale of preneed cemetery and funeral merchandise and service contracts in Florida and Chapter 470, F.S., regulates funeral directors, embalmers and direct disposers.

#### Chapter 470, F.S., Revisions:

Chapter 470, F.S., provides authority to the Department of Business and Professional Regulation (DBPR) and the Board of Funeral Directors and Embalmers (Board) to regulate, through licensure, registration and inspection, funeral directors, embalmers, direct disposers and the facilities each operates. Practitioners must meet established criteria regarding education and training, pass an examination, and maintain continuing education credits. Establishments must register with DBPR. Funeral directors may also be owners and operators of cemeteries and may be involved in contracting for the sale of preneed<sup>1</sup> services and merchandise. This regulatory program is designed for the primary purpose of protecting the public against incompetent and unskilled practitioners.

#### Requirements:

Embalmer by Examination: 18 years of age, high school diploma or equivalent, completion of a one year course in mortuary science, one year of internship under a licensed embalmer, passage of the required examination, passage of National Board science section, and completion of a board approved communicable disease and HIV/AIDS state course.

<sup>1</sup> Section 470.002, F.S., defines "preneed sales agents" as any person who is registered under chapter 497, F.S., to sell preneed burial or funeral service and merchandise contracts or direct disposition contracts in this state.

Funeral Director by Examination: 18 years of age, high school diploma or equivalent, associate of arts degree in mortuary science, one year of internship under a licensed funeral director, passage of the required examination, passage of National Board science and arts section, and completion of a board approved communicable disease and HIV/AIDS state course.

Direct Disposer: 18 years of age, high school diploma or equivalent, completion of a college credit course in Florida mortuary law, passage of the required examination, and completion of a board approved communicable disease and HIV/AIDS course.

Establishments: Funeral establishments, cinerator facilities, direct disposal establishments, removal services, refrigeration services, and centralized embalming facilities must provide name, specific location, owners, and person(s) in charge. Funeral establishments must consist of at least 1,250 contiguous interior square feet and must maintain suitable capacity for the refrigeration and storage of dead human bodies or a preparation room equipped with necessary ventilation and drainage containing necessary instruments for embalming dead human bodies.

**Board Composition:**

7 Members – 5 licensed funeral directors; 2 Florida residents with no connection to the industry. One consumer member of the board must be at least 60 years of age. Term of office: four years.

**Maximum Statutory Penalty:**

Criminal: Violations of certain provisions of the practice range between first and second-degree misdemeanors. Violation of Section 455.2275, F.S., constitutes a third degree felony.

Unlicensed Activity: Notice to cease and desist, an administrative or civil fine of not less than \$500 or more than \$5,000 for each offense.

Administrative: Up to \$5,000 and revocation, plus cost of investigation.

The bill amends section 470.002, F.S., to provide definitions for the terms "body parts," "closed container," "cremated remains," "cremation chamber," "cremation container," "cremation interment container," "niche," "processing," "pulverization," "temporary container," and "urn."

The bill amends the definition of "casket" to provide that a casket is constructed of materials that may or may not be combustible. The definition of "cremation" is redefined. The term "funeral merchandise" is amended to include cremation interment containers. The bill clarifies and amends the definition of "legally authorized person."

The bill requires the embalmer apprentice program to allow an embalmer apprentice to serve in an apprentice capacity for no longer than 3 years or for a period of no longer than 5 years if the apprentice is enrolled in other specified educational programs.

The bill requires direct disposal establishments to practice in a fixed location of at least 625 interior contiguous square feet. The facility must maintain or make arrangements for suitable capacity for the refrigeration and storage of dead bodies. Each cinerator facility is required to be inspected prior to renewal or issuance of its license, and the facility is required to maintain one or more retorts for the reduction of dead bodies, maintain refrigeration that satisfies set standards which contain sufficient shelving, maintain sufficient pollution control equipment to comply with annual certification, have available sufficient sealed containers for transportation of bodies, maintain clean and sanitary premises, have appropriate Department of Environmental Protection permits, and retain all signed contracts for at least 2 years.

The bill requires that a funeral establishment must maintain a preparation room equipped with necessary ventilation, drainage, and necessary instruments for embalming, or the funeral establishment must make arrangements for a preparation room as established by the Board of Funeral Directors and Embalmers.

The bill amends section 470.025, F.S., to provide that an operator of a cinerator facility "shall be entitled to rely on the permission of a legally authorized person to cremate more than one human body" at one time. The bill provides cremation containers as acceptable devises for the placement of human remains in cinerator facilities, and includes body parts as human remains that are prohibited from being placed in a retort or cremation chamber without a proper container.

The bill also provides that cremation may include the processing and pulverization of bone fragments. The bill requires the operator of a cinerator facility to establish written procedures for the removal of human remains and bone fragments resulting from cremation. The operator of the facility would not be liable for the unintentional or incidental commingling of human remains and bone fragments. A copy of the procedures must be available, upon request, to the DBPR and legally authorized persons.

Cremation may be performed on parts of human remains upon the request of a legally authorized person; however, this does not authorize the cremation of body parts as defined in section 470.002, F.S.

Funeral directors in charge of funeral establishments or funeral directors acting as direct disposers in charge of a direct disposal establishment are responsible for the control and activities of the establishment's preneed agents. A direct disposer in charge of a direct disposal establishment is responsible for the control and activities of the establishment's preneed agents.

This bill changes the date from the 10th to the 20th of each month as the day that each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility must report to the DBPR the name of the deceased and other information required with respect to each dead human handled by the facility.

The bill prohibits price guarantees for goods and services to be provided at a future date.

The bill amends section 470.0355, F.S., to require the proper identification of human remains in the casket, alternative container, or cremation container. Effective October 1, 2003, a licensed funeral establishment in charge of funeral arrangements in an unlicensed cemetery is responsible for the identification of human remains. The bill sets forth requirements for the identification of human remains in unlicensed and licensed cemeteries. The board is authorized to make rules specifying the materials and locations of the identifying markers.

A licensed cemetery is not liable for any inconsistency between the identity shown on the burial transit permit or other identification and the actual identity of the remains. The cemetery can rely on the identity stated on the burial transit permit or on the identification supplied by a person licensed under chapter 470, F.S.

The bill requires direct disposal establishments to establish a system for the identification of dead human remains received, and for tracking the human remains from the time received until the time of delivery to authorized persons. A copy of the identification procedures must be made available, upon request, to the DPBR and legally authorized persons.

#### Chapter 497, F.S.:

This bill expands the definitions in ch. 497, F.S., to encompass terms used in the direct disposal or cremation of human remains. The use of cremation as a means of disposal of human remains has steadily increased in the state to the point that approximately 50 percent of all disposals are accomplished in that fashion. The preneed sale of contracts for cremation merchandise and services has also increased sparking the need for the statutory language governing the regulation of these activities to more accurately reflect industry practices. The terms "niche" and "urn" are added to the definitions in s. 497.005, F.S., and the definitions of the terms "casket," "ossuary," and "scattering garden" are expanded to incorporate more complete descriptions of direct disposal or cremation activities.

During the past two years, troublesome developments in the funeral and cemetery industry have been brought into the public's eye by numerous media reports. News stories about disturbed remains in a South Florida cemetery (Menorah Gardens), lost remains in a Volusia County cemetery (Bellview), and the cremation debacle in North Georgia prompted considerable consumer concern about Florida's regulatory system for death care industry activities in the state.

Currently, the Department of Financial Services (DFS) regulates the activities of funeral and cemetery businesses that relate to a consumer's financial interests and the Department of Business and Professional Regulation regulates the professional aspects of human remains disposal practiced by funeral directors and direct disposers. The DFS's Board of Funeral and Cemetery Services assists the department in regulating the financial interest activities participated in by cemetery owners and operators, funeral directors, and any other person in the death care industry that contracts for the sale of preneed services and merchandise. The regulatory scheme for these activities requires oversight of the participating company's financial stability and contractual behavior with its clients. Investigations require the expertise of financial examiners, which is a duty shared with other regulatory units under the department. Over the years, regulation of cemetery activities has been added to the department's duties as a result of financial interest concerns by consumers. Rulemaking authority is shared by the department and the board.

The Department of Business and Professional Regulation's (DBPR) Board of Funeral Directors and Embalmers is the professional regulatory body that oversees the health, safety, and welfare regulations of those involved in the disposal of human remains. The regulatory scheme for these activities requires oversight of the professional's personal knowledge of proper disposal practices and the latest health and safety developments related to those practices. Continuing education and testing requirements assists the board in verifying the knowledge level of the licensees. Funeral directors may also be owners and operators of cemeteries and may be involved in contracting for the sale of preneed services and merchandise.

Both DFS and DBPR have been involved in investigating the complaints lodged against several of Florida's funeral and cemetery companies. The DFS's Bureau of Funerals & Cemeteries asked the Attorney General to bring suit against Menorah Gardens (which is pending) and an overseer has been appointed to monitor the cleanup and records keeping at Menorah. Bellview is currently in receivership and most of the properties have been sold.

Part of the problems at these cemeteries centers on the relatively small size allotted for each grave, the very close spacing of the grave sites and the lack of proper burial identification. This bill sets the statutory standard for each adult grave space to be at least 42 inches in width and 96 inches in length, excepting preinstalled vaults in designated areas. Additionally, effective October 1, 2003, the bill requires a cemetery company to prepare, maintain, and make available to the department, a map and a certified land survey that will provide certain reference markers for the layout of grave spaces. The map must show the number of grave spaces, the location of each grave, and the dimensions of a standard adult grave space. This must be done prior to the sale of any grave spaces in undeveloped areas of a licensed cemetery after the October trigger date.

The October date also triggers the human remains identification requirements provided by this bill. Any human remains interred, entombed, scattered, or otherwise placed for final rest are to be identified on the outer burial container or on the inside of a crypt or niche with a tag or permanent identifying marker containing the name of the decedent and the date of death, if available.

Chapter 497, F.S., requires anyone who is engaged in the activity of selling preneed contracts for funeral or cemetery merchandise and services to first acquire a certificate of authority from the department. This bill includes advertising to sell or making arrangements for preneed contracts in the realm of activities covered by the certificate of authority. The bill also clarifies that preneed contract cancellation privileges under s. 497.419, F.S., do not extend to burial rights, merchandise, or services that have already been used by the purchaser. Finally, the bill revises the current requirement that the Board of Funeral and Cemetery Services under DFS must review the trust funds, trust agreements or evidence of all outstanding preneed contracts of the holder of an inactive or revoked certificate of authority. The revision makes this review permissive, but increases the

board's authority to include the performance of procedures the board deems necessary to protect consumers in the case of inactive or revoked certificates of authority.

Staff from the Council on Competitive Commerce, the Banking Committee, and the Business Regulation Committee were directed to monitor the 13 meetings held by a group of industry representatives (Legislative Partnership Committee of 2003 or LPC03) which formed to work towards consensus on a number of funeral and cemetery regulation issues. At the initial meeting of the LPC03, four representatives of the Florida Funeral Director's Association (FFDA), four representatives of the Florida Funeral & Cemetery Alliance (formerly FCA), four representatives of the Florida Morticians Association (FMA), and four representatives of the Independent Funeral Director's of Florida met and outlined a proposed purpose and work plan. The Independent Funeral Director's of Florida voted to not formally associate with the partnership at its June 9 board meeting.

After the LPC03 compiled its legislative recommendations into report form, committee staff conducted a meeting to discuss the potential consensus and controversy surrounding these issues. The meeting was attended by representatives from the LPC03, the regulatory agencies, and individuals representing the Board of Funeral Directors & Embalmers and the Independent Funeral Directors Association. Staff presented each issue and took testimony on whether there was consensus on the issue or whether it was still subject to controversy between the groups represented. The provisions of this bill reflect those issues covered by ch. 497, F.S., which were not objected to by any person in attendance at the [staff conducted] meeting.

#### C. SECTION DIRECTORY:

**Section 1:** Amends Section 470.002, to revise and create definitions.

**Section 2:** Amends Section 470.0085, to revise requirements for the embalmer apprentice program.

**Section 3:** Amends Section 470.021, to revise standards of direct disposal establishments.

**Section 4:** Amends Section 470.024, to revise licensure requirements of funeral establishments.

**Section 5:** Amends Section 470.025, to create and revise licensure requirements for cinerator facilities.

**Section 6:** Amends Section 470.0255, to create additional procedural requirements for cremation.

**Section 7:** Amends Section 470.028, to establish responsibilities for control and supervision of preneed agents.

**Section 8:** Amends Section 470.029, to revise the date when establishment reports are due.

**Section 9:** Amends Section 470.031, to create additional prohibitions under this act.

**Section 10:** Amends Section 470.0355, to create additional requirements for the identification of human remains.

**Section 11:** Amends Section 470.036, to provide for reenactment of disciplinary proceedings.

**Section 12:** Amends s. 497.005, F.S., expanding the definitions relating to cemetery products to include terms relating to the direct disposal of human remains or cremation.

**Section 13:** Creates s. 497.306, F.S., to provide statutory standards for the size, layout and identification of grave spaces which must be surveyed and mapped prior to the sale of any grave spaces in undeveloped areas of licensed cemeteries. Adult grave spaces existing in developed areas of a cemetery before October 1, 2003, are exempt from these standards.

**Section 14:** Creates s. 497.307, F.S., to provide statutory standards for the identification of human remains on the outside and inside of burial containers. This section applies to human remains put to final rest on or after October 1, 2003.

**Section 15:** Amends s. 497.405, F.S., to include advertising to sell and arranging for preneed contracts in those activities that are prohibited unless the person engaged in these activities has a valid certificate of authority to sell preneed contracts from the department. This section also adds cremation interment containers to the list of items certain religious-institution-owned cemeteries<sup>2</sup> may sell to their members and families without a certificate of authority.

**Section 16:** Amends s. 497.419, F.S., to clarify that preneed contract cancellation privileges under s. 497.419, F.S., do not extend to burial rights, merchandise or services that have already been used by the purchaser.

**Section 17:** Amends s. 497.436, F.S., to provide that the Board of Funeral and Cemetery Services may review the trust funds, trust agreements or evidence of all outstanding preneed contracts of the holder of an inactive or revoked certificate of authority. This revision makes the review permissive, but increases the board's rulemaking authority to include the performance of procedures the board deems necessary to protect consumers in the case of inactive or revoked certificates of authority.

**Section 18:** Provides for an effective date of October 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is not anticipated to be significant.

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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<sup>2</sup> Specifically a religious-institution-owned cemetery in counties with a population of at least 960,000 on July 1, 1996.

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 23, 2003, the Committee on Commerce adopted two amendments to HB 1641 and then passed the bill favorably as a Committee Substitute. The first amendment removed the revision in s. 470.0294, F.S., relating to the legal authority to dispose of fetal remains of less than 20 weeks' gestation. The second amendment placed the provisions of HB 907 relating to revisions of ch. 497, F.S., (also passed by the committee) onto the bill.